

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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77-1423

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
IN THE MATTER OF THE GRAND
JURY SUBPOENAS SERVED UPON

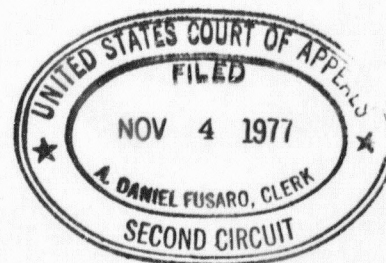
ANDRES ROSADO,
JULIO ROSADO, AND
LUIS ROSADO

77-1423

Appellants.
-----X

APPELLANTS' APPENDIX

JESSE BERMAN
Attorney for Appellants
351 Broadway
New York, New York 10013
[212] 431-4600



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DISTRICT COURT DOCKET SHEET ENTRIES
(M-11-188)

PROCEEDINGS

- 8-19-77 IN RE: DISCLOSURE OF CERTAIN MATTERS BEFORE THE 6-76 ADDITIONAL GJ.---
Filed petition & order that petitioner be furnished at once with
photographic copies of the following documents now in possession
of the US Attorney for the S.D. of N.Y. & that documents listed shall
be certified as true by USA for S.D. Owen, J.
- 8-22-77 IN RE: GJ OF B'NAI TORAH, ---Filed brown envelope ordered sealed dated
8-19-77 32 pages. Owen, J.
- 8-23-77 IN RE: Application for disclosure of certain Income Tax Returns etc.,
ordered sealed. Owen, J.
- 8-18-77 USA -v- JOHN DOE, ---Filed writ of H/C for Vankirk Moore, writ satisfied
8-17-77. Owen, J.
- 8-22-77 USA -v- JOHN DOE ---Filed writ of H/C ad test for Robert DeChabert, writ
satisfied dated 7-25-77. Goettel, J.
- 8-23-77 IN RE: DAVID HARDING WITNESS IN THE TRIAL OF THE PEOPLE OF THE STATE OF
N.Y. ---Filed affdvt & order of Alan Levine, ordered that David Harding
be returned to MCC no later than 5:50 P.M. as indicated. Owen, J.
- 8-24-77 IN RE: GJS DIRECTED AT BERNARD JAY, ---Filed order that Jay Coven P.C.
shall appear before the GJ on 8-25-77 at 2:00 P.M. at which time the
clerk of court will return to Bernard Jay Coven P.C. its documents
sealed on 8-11-77 & he will produce & identify the records for the
GJ. Goettel, J.
- 8-24-77 IN RE: GJS SERVED ON ANDREW JULIO, AND LUIS ROSADO, ---Filed order that
the above mentioned defts. are not to be turned over to the GJ the
F.B.I. or the US attorney's office or any other party without an order
of the court. Owen, J.
- 8-22-77 IN RE: GJS OF ANDRES ROSADO ---Filed motion for production of records
of interviews conducted by govt agents etc. Filed in court.
- 8-22-77 IN RE: GJS OF JULIO, LUIS, & ANDRES ROSADO, ---Filed motion for disclosure
of electronic or other surveillance etc. Filed in court.
- 8-22-77 IN RE: GJS OF JULIO, LUIS, & ANDRES ROSADO, ---Filed motion to quash
GJS. Filed in court.
- 8-22-77 IN RE: GJS OF ANDRES, JULIO, & LUIS ROSADO, ---Filed affdvt of Marc-
Marmaro. Filed in court.
- 8-28-77 IN RE: GJ TESTIMONY OF THEODORE R. COLBORN, ---Filed one brown envelope
the within endorsement & documents be sealed as per order dated 7-27
of J. Haight. Goettel, J.
- 8-22-77 USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Benny Ong-
Pa. writ issued ret. 9-7-77.
- 8-25-77 RE: GJ PROCEEDINGS OF B'NAI TORAH, ---Filed one brown envelope dated
8-23-77 (23 pages.) ordered sealed.
- 8-26-77 RE: B'NAI TORAH, ---Filed one brown envelope ordered sealed. Owen, J.
- 8-26-77 USA -v- JOHN DOE, ---Filed writ of H/C for Clarence William Gardner,
writ satisfied. Owen, J.
- 8-26-77 USA -v- JOHN DOE, ---Filed writ of H/C ad test for Theodore Buchwald,
writ satisfied. Owen, J.
- 8-26-77 IN RE: CERTAIN MOTIONS TO QUASH GJS, ---Filed transcript of record of
proceedings dated 7-19-77 Ward, J.
- 8-26-77 IN RE: CERTAIN RECORDS SUBPOENAED BY GOVT, ETC. ---Filed transcript of
record of proceedings dated 6-21-77. Bonsal, J.
- 8-26-77 IN RE: JUDGE BRIEANT ---Filed remarks of Judge Brieant on selection of
6-7-77 GJ. Filed
- IN RE: GJ PROCEEDINGS B'NAI TORAH ---memo & order that all other requests
for relief are denied pending the outcome of the investigation. So
ordered, Owen, J.

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PROCEEDINGS

29-77 IN RE: EDWARD DI SERO, ---Filed affdvt & notice of motion of Arnold E. Wallach for an order releasing resp. from his committment for civil contempt.

3-15-77 USA -v- John Doe---Filed affdvt for writ of H/E ad test for Bruce Taylor writ issued, ret.8-17-77. Kaufman,J.

3-31-77 USA -v- John Doe---Filed writ of H/C ad test for Emilio Rivas,writ satisfied 8-30-77, Broderick,J.

3-1-77 IN RE: GJS OF PETER GOUSIS---Filed show cause order with stay unsigned therefor no adequate showing has been made that the subpoena should be stayed or quashed, and the application for an order to show cause is denied. Broderick,J.

3-1-77 IN RE: RECORDS OF HISPANIC ASSOC. FOR DRUG FREE SOCIETY,---Filed transcript of record of proceedings dated 7-6-77 Bonsal,J.

3-6-77 USA -v- JOHN DOE---Filed writ of H/C ad test for Frederick Richard Drew writ satisfied, 8-11-77. Goettel,J.

3-6-77 USA -v- JOHN DOE---Filed affdvt of Kenneth V. Handal., writ issued, ret.9-9-77.

3-6-77 USA -v- JOHN DOE---Filed affdvt of Kenneth V. Handal., writ issued, ret. 9-13-77.

3-8-77 IN RE: DOCUMENTS IN THE CUSTODY OF CLERK OF USDCSDNY,--- affdvt of - Richard Weinberg & order that any & all papers & documents in the custody of the Clerk of the USDC pertaining to SEC be furnished - immediately to the US Attorney of SDNY,etc, as indicated. Broderick.

3-8-77 USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Frank Townsend,writ issued, ret. 9-9-77.

3-8-77 USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Isaiah Crutch, writ issued, ret 9-15-77.

3-13-77 USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Frederick-George Harris,et al., writ satisfied Owen, J.

3-13-77 In re: Certain Proceedings before 6-76 GJ. Filed brown envelope ordered sealed until further order of the court.Duffy,J. AUSA Diskant.

3-13-77 USA -v-JOHN DOE---Filed affdvt for writ of H/C ad test for Frank Townsend, writ issued 9-15-77.

3-14-77 USA -v- JOHN DOE,---Filed affdvt for writ of H/C ad test for Ivan Perce writ issued, ret. 9-16-77.

3-15-77 IN RE: GJS SERVED ON ANDRES ROSADO, JULIO ROSADO & LUIS ROSADO,---Filed order to show cause that the US attorney for the S.D.N.Y. appear before this court on 9-16-77 at 4:30 PM & show cause why an order should not be entered vacating the above mentioned orders of civil contempt.

3-14-77 USA -v- JOSEPH A. SALVATO,---Filed brown envelope contents ordered sealed & placed in vault in Clerks office. DUFFY,J.

3-15-77 IN RE: A.W. FABRICS, INC.---Filed brown envelope ordered sealed until further order of the court. DUFFY,J.

3-14-77 IN RE: GJS SERVED ON EUROPEAN AMERICAN BANK,--- Filed show cause order at motion term of this court to be held in room 506 on 9-12-77 at 9:30 A.M. for an order quashing subpoena.

3-14-77 IN RE: GJS SERVED ON EUROPEAN AMERICAN BANK,---Filed memo endorsed on show cause order dated 9-14-77, Motion heard & denied, So ordered Duffy, J.

3-15-77 USA -v-JOHN DOE-- Filed writ of H/C ad test, for Frank Townsend,writ satisfied. Duffy,J.

3-15-77 USA -v-JOHN DOE---Filed writ of H/C ad test, for Edward Mauldin, Jr. writ satisfied. Duffy,J.

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PROCEEDINGS

	that US Atty and the IRS may disclose matters occurring before the captioned grand juries relating to the investigation described in the attached affdvt. of John Pandolfi.
9-21-77	IN RE GRAND JURY-----Filed order that pursuant to Rule 6(e) of the F.R.Crim.P. that US Atty and the IRS may disclose matters occurring before the captioned grand juries relating to the investigation described in the attached affdvt. of Irving Stern.
9-21-77	IN RE GRAND JURY-----Filed order that pursuant to Rule 6(e) of the F.R.Crim.P. that US Atty and the IRS may disclose matters occurring before the captioned grand juries relating to the investigation described in the attached affdvt.
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9-26-77	USA-v-JOHN DOE ET AL-----FILED affdvt for writ of habeas corpus ad test. for Frank Pallatta ret. 10-14-77.
9-26-77	USA-V-JOHN DOE ET AL-----Filed affdvt for writ of habeas corpus ad test. for Joseph Magnano ret. 10-14-77.
9-26-77	USA-V-JOHN DOE-----Filed affdvt. for writ of habeas corpus ad test for Matthew Inkeles, ret. 9-29-77.
9-26-77	USA-V-John Doe-----Filed affdvt. for writ of habeas corpus ad test. for John Gwynn, ret. 10-5-77.
10-3-77	IN RE GRAND JURY-----Filed affdvt. of Joan Lois Rosado.
10-3-77	IN RE GRAND JURY-----Filed affdvt. of Marc Marmaro in response to the affdvt of Jesse Berman dated 9-14-77.
10-3-77	IN RE GRAND JURY-----Filed affdvt. of Joan Lois Rosado in response to certain questions which he asked her on that date & which he had not previously asked
10-3-77	IN RE GRAND JURY-----Filed affdvt. of Jane Parver that she has read the affdvt. of Marc Marmaro.
10-3-77	IN RE GRAND JURY-----Filed transcript of proceedings before Hon. James B. Parsons Chief Judge of ND of Ill. Eastern Division.
10-3-77	IN RE GRAND JURY-----Filed transcript of proceedings before Hon. James B. Parsons Chief Judge of NB of Ill. Eastern Division.
9-26-77	USA-V-JOHN DOE-----Filed affdvt. for writ of habeas corpus as test. for John DeGasperi ret. 10-3-77.
9-27-77	USA-V-JOHN DOE-----Filed affdvt. for writ of habeas corpus ad test for Carson Corley ret. 9-28-77.
9-27-77	USA-V-JOHN DOE-----Filed affdvt. for writ of habeas corpus ad test. for Anthony Ruscillo ret 10-3-77.
9-28-77	In RE GRAND JURY-----Filed order that pursuant to rule 6(e) of FRCrimP that Grand Jury Exhibits be disclosed and available to authorized rep. of police of Montreal So Ordered Palmeiri J.
9-28-77	IN RE GRAND JURY-----Filed memo. and order of Andres, Julio and Luis Rosado So Ordered Owen J.
9-29-77	USA-V-NATHANIL H. ACKERMAN-----Filed brown envelope ordered sealed and placed in the vault in the clerk's office. So Ordered Knapp, J.
10-3-77	IN RE GRAND JURY-----Filed stip. that the motion to quash the grand jury subpoena du tecum served upon Doctors Fein and Pershkov dated 2-18-77 which is returnable 9-16-77 is hereby withdrawn without cost to either side. So Ordered Duffy, J.
10-3-77	IN RE: 1976 ADDTL GJ FOR JUNE---Filed large brown envelope ordered sealed & not to be opened until further orders of court. Stewart, J.
10-3-77	IN RE: GJS SERVED ON ROBERT A. FALLER,---Filed affdvt & notice of Michael T. Sullivan for order to quash subpoena. Ret. 10-3-77 at 9:30 A.M. Et. 505. before Stewart, Jr. J.
10-3-77	IN RE: GJS SERVED ON ROBERT A. FALLER,---Filed in support of

PROCEEDINGS

Date:
 Judge:

- US Atty and the IRS may disclose matters occurring before the captioned
juries relating to the investigation described in the attached affdvt. of
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- USA-V-JOHN DOE-----Filed affdvt. for writ of habeas corpus ad test for Matthew
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- USA-V-John Doe-----Filed affdvt. for writ of habeas corpus ad test. for John
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- IN RE GRAND JURY-----Filed affdvt. of Joan Lois Rosado.
- IN RE GRAND JURY-----Filed affdvt. of Marc Marmaro in response to the affdvt of
Jesse Berman dated 9-14-77.
- IN RE GRAND JURY-----Filed affdvt. of Joan Lois Rosado in response to certain
questions which he asked her on that date & which he had not previously asked
- IN RE GRAND JURY-----Filed affdvt. of Jane Parver that she has read the affdvt.
of Marc Marmaro.
- IN RE GRAND JURY-----Filed transcript of proceedings before Hon. James B. Parsons
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- USA-V-JOHN DOE-----Filed affdvt. for writ of habeas corpus as test. for John
DeGasperis ret. 10-3-77.
- USA-V-JOHN DOE-----Filed affdvt. for writ of habeas corpus ad test for Carson
Corley ret. 9-28-77.
- USA-V-JOHN DOE-----Filed affdvt. for writ of habeas corpus ad test. for Anthony
Ruscillo ret 10-3-77.
- IN RE GRAND JURY-----Filed order that pursuant to rule 6(e) of FRCrimP that Grand
Jury Exhibits be disclosed and available to authorized rep. of police of Montreal
So Ordered Palmeiri J.
- IN RE GRAND JURY-ANDRES ROSADO et al: Filed Memorandum & order; The Rosados' motions
to vacate civil contempt & other relief are denied except to grant free transcript. OWEN
- USA-V-NATHANIL H. ACKERMAN-----Filed brown envelope ordered sealed and placed
in the vault in the clerk's office. So Ordered Knapp, J.
- IN RE GRAND JURY-----Filed stip. that the motion to quash the grand jury subpoena duces
tecum served upon Doctors Fein and Pershkov dated 2-18-77 which is returnable
9-16-77 is hereby withdrawn without cost to either side; So Ordered Duffy, J.
- IN RE: 1976 ADDTL GJ FOR JUNE---Filed large brown envelope ordered sealed
& not to be opened until further orders of court. Stewart, J.
- IN RE: GJS SERVED ON ROBERT A. FALLER,---Filed affdvt & notice of notice
of Michael T. Sullivan for order to quash subpoena. Ret. 10-5-77
at 9:30 A.M. Rm. 506. before Stewart, Jr. J.
- IN RE: GJS SERVED ON ROBERT A. FALLER,---Filed memo in support of notice
to Quash.

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ANDRES ROSADO'S INDIVIDUAL DISCOVERY MOTION
(dated August 21, 1977)

In the Matter of the
Grand Jury Subpoena of

ANDRES ROSADO

M11-188

MOTION FOR THE PRODUCTION OF
ALL RECORDS OF INTERVIEWS OF
MOVANT CONDUCTED BY GOVERNMENT
AGENTS AND FOR THE TRANSCRIPTS
OF PRIOR GRAND JURY TESTIMONY

Movant, ANDRES ROSADO, by his undersigned counsel,
moves this Court for an order compelling the government to
furnish to movant copies of all records, transcripts, mechanical
or electronic recordings, or other reports of interviews of him
conducted by agents of the United States government. Such records
include, but are not limited to, the records of interviews or of
attempted interviews of movant by agents of the Federal Bureau
of Investigation, whether or not those records are set forth on
the forms commonly known as "302s". In addition movant requests
the production of the transcript of his prior grand jury testimony.

Dated: New York, New York
August 21, 1977

Yours, etc.,

WILLIAM M. KUNSTLER
Attorney for Andres Rosado
853 Broadway
New York, New York 10003
[212] 674-3303

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APPELLANTS' MOTION TO QUASH
(dated August 21, 1977)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter of the
Grand Jury Subpoenas of

JULIO ROSADO

No. _____

LUIS ROSADO

ANDRES ROSADO

MOTION TO QUASH GRAND JURY SUBPOENAS

Movants are subpoenaed to appear on August 22, 1977, before a grand jury of this district, investigating a conspiracy to commit a crime against the United States in violation Title 18 U.S.C. sections 371, 841 et seq., and 921 et seq. Witnesses Julio and Luis Rosado, appearing pro se, witness Andres Rosado, by his undersigned counsel, and on the basis of the affidavit attached hereto, and all papers previously filed in the Matter of the Grand Jury Subpoenas of Maria T. Cueto, Raisa Nemikin and Pedro Archuleta (M11-188), move this Court for an Order quashing their subpoenas because

1. The purpose of these subpoenas is to stop the work of the National Committee Against Grand Jury Repression and its New York Chapter of which Julio and Luis Rosado are founding members.
2. The subpoenas are aimed at incarcerating the witnesses as part of a broad plan of repression against the Puerto Rican Independence Movement: a plan which amounts to nothing less than a policy of internment.
3. The subpoenas are the conclusion of two years of surveillance, visits, harassment, and attempts at intimidation of the witnesses, seeking to force them into becoming perjurious informants.
4. These subpoenas clearly represent violations of the witnesses human rights under international law; a punitive step in repressing their participation in the education of the American people about the repressive programs of the United States intelligence agencies.
5. The subpoenas are a product of illegal electronic surveillance.

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Dated: New York, New York
August 21, 1977

Yours, etc.,

JULIO ROSADO, Witness pro se
263 Eastern Parkway
Brooklyn, New York
(212) 638-6889

LUIS ROSADO, Witness pro se
444 Second Avenue
New York, New York
(212) 689-3314

WILLIAM M. KUNSTLER
Attorney for Andres Rosado
853 Broadway
New York, New York 10003
(212) 674-3303

A-10

In the Matter of the
Grand Jury Subpoenas of

JULIO ROSADO

LUIS ROSADO

M11-188

ANDRES ROSADO

AFFIDAVIT

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

JULIO ROSADO, under the pains and penalties of perjury, hereby affirms as follows:

1. I and my brothers, LUIS and ANDRES, have been subpoenaed, theoretically by a grand jury of this district, but actually by the United States government through the United States Attorney and/or the Federal Bureau of Investigation, to "provide fingerprints, palm prints, photographs, handwriting exemplars, and voice exemplars." I am making this affidavit in support of our motion to quash these subpoenas on the grounds, inter alia, that their real and sole purpose is to:

- (a) cripple or destroy the work of the National Committee Against Grand Jury Repression and its New York chapter;
- (b) incarcerate and intern us and other supporters of Puerto Rican independence without any trial, much less one by jury, and through a secret and summary Star Chamber proceeding;
- (c) continue a vicious two-year campaign of harassment and attempted intimidation, deterrence, and terrorization through, among other things, the use of chronic electronic and physical surveillance, as well as visits by F.B.I. agents to our homes and jobs and those of our friends, relatives, neighbors and employers, with the end in view of forcing us to become perjurious informants for the F.B.I.;
- (d) utilize the subpoena power of the grand jury as a punitive device to punish us for our participation in the education of the American people about the repressive programs of United States intelligence agencies, particularly as they relate to the Puerto Rican Independence Movement, its members, supporters, and activities; and
- (e) attempt to intimidate, deter, chill, inhibit, harass, and terrorize us and all other persons and organizations, be they North American or Puerto Rican, who or which are dedicated to the attainment of independence and freedom for the people of Puerto Rico and the release of the Five Puerto Rican Nationalist Prisoners.

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2. For this Court's information, the following background material about us is herewith submitted as follows:

(a) JULIO ROSADO

I am 38 years old, married, and the father of two small children, with a third one on the way. I am presently employed as a warehouseman in New York City and I am the sole support of my family. I have been active in the Puerto Rican Independence Movement since 1964 as a supporter thereof. I am a former editor of Community News Service and a former reporter for the San Juan Star. In addition, I was one of the founders of the National Committee Against Grand Jury Repression and I am a member of its New York chapter.

(b) LUIS ROSADO

Luis is 26 years old, married, and the father of two small children. He is presently employed as a porter in New York City and is the sole support of his family. He is a former consultant to the National Commission on Hispanic Affairs of the Protestant Episcopal Church having lost that job through the damaging publicity surrounding the subpoenaing of Raisa Nemikin and Maria T. Cueto. He was also the director of the Grand Jury Education Program of the National Council of Churches, a position that was also lost by the aforesaid publicity. In addition, he is a member of the New York Committee Against Grand Jury Repression as well as the Concerned Churchpersons, a group of laity and clergy organized to combat grand jury abuse.



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(c) ANDRES ROSADO

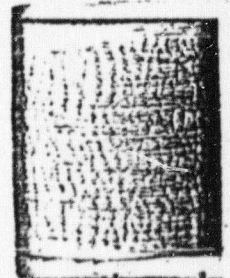
Andres is 32 years old, married, and the father of two small children. He is a family counsellor for a poverty program and the sole support of his wife and children. While he is not affiliated with any group or organization, he is a strong supporter of Independence for Puerto Rico.

3. According to our information, there are two grand juries which have been currently convened in order to effectuate the program set forth in Paragraph One above; namely one in this district convened on or about November 4, 1976, to which my brothers and I have been subpoenaed, and a special grand jury, convened on or about February, 1975 in the Northern District of Illinois. Numerous witnesses have been subpoenaed before both of these grand juries, of whom six have been incarcerated to date, three in this district and three in Chicago. In addition, there was a predecessor grand jury in this district which, like the above panels, returned no indictments but resulted in the incarceration of at least one person. Furthermore, my wife, my brother, Andres and I were subpoenaed to appear before this predecessor grand jury. Although my brother did testify, my wife and I refused to do so and, after three postponements, the subpoena was continued indefinitely and allowed to expire with the life of the grand jury in October, 1976.

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4. The entire history of the above grand juries is replete with evidence that they are being used for wholly illegal purposes by the United States government and that they have become agencies for the political repression of those who, like ourselves, firmly and irrevocably believe in the Independence of Puerto Rico. The Court's attention is called to, among other things:

- (a) the absence of any indictments thereby;
- (b) the regular subpoenaing of witnesses who the government knows in advance will not cooperate with the grand jury;
- (c) the release to the press of false and fabricated information designed to create a public climate of hostility towards supporters of Puerto Rican Independence. See, for example, the article of Mary Breasted in the New York Times of Sunday, April 17, 1977, and a series by John Johnson on WABC-TV, Channel 7, following the bombings of the office of the F.B.I. in New York City.
- (d) the recent illegal breaking into the Bronx apartment of Vincente Alba by New York City police and the initial announcement thereby to the press that he and one David Perez were key suspects in bombings attributed to the F.A.L.N.



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- (e) the utilization of repressive and archaic grand jury procedures which straitjacket federal courts into becoming accomplices of United States intelligence agencies in achieving the objective set forth in Paragraph One above.

5. Parenthetically, but hardly coincidentally, our subpoenas were made returnable on August 17, 1977, the very date when supporters of Puerto Rican Independence were to address the United Nations Committee on Decolonization, which is considering a resolution declaring Puerto Rico a colony of the United States and urging the United States government to refrain from acts of repression against members of the Puerto Rican National Liberation Struggle and its supporters.

6. The use by federal intelligence agencies of criminal tactics against persons and organizations who and which oppose United States foreign or domestic policies has been thoroughly documented in the report of the Senate Subcommittee on Governmental Operations known as the Church Committee, and this Court should demand no less a searching inquiry into the perversions of the grand jury process by those same agencies, as well as their employment of the criminal acts uncovered by the said Church

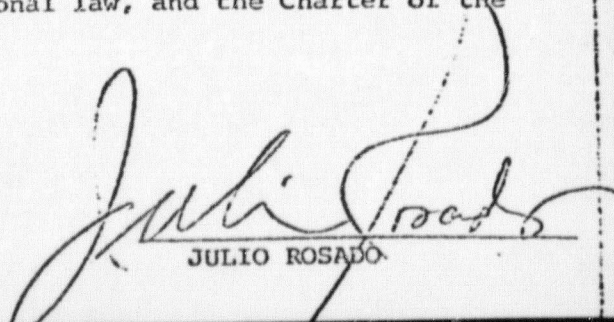
committee against us and other supporters of the Independence for Puerto Rico. Governmental lawlessness has become so institutionalized in the United States and is so thoroughly documented in the Church report, among others, that this Court should accept no denials or claims of lack of knowledge from the United States Attorney or any person or agency connected with the instant grand jury, either directly or indirectly, and, instead, permit us a full evidentiary hearing on such governmental misconduct before deciding our motion to quash the within subpoenas. Only by such a hearing is there any chance for the truth of our allegations to be established.

7. Putting us in jail for the life of the instant grand jury is exactly what the government wants this Court to do. As conceded by the Assistant United States Attorney in the Court's robing room last Tuesday, the government well knows that we will not, as a matter of principle, cooperate with this or any similar grand jury. Yet it insists on calling us anyway solely for the purpose of adding three more supporters of Puerto Rican Independence to the number of presently interned persons in favor of such status. Recently, Attorney General Griffin Bell, during his confirmation hearings before the Senate Judiciary Committee, stated that the federal grand jury process needed reevaluation to weed out its abuses, a conclusion shared by the American Bar Association which, at its annual meeting in Chicago a few weeks ago, recognized that grand juries are frequently used for political purposes.

WHEREFORE my brothers and I ask that this Court quash our subpoenas or, in the alternative, grant us an evidentiary hearing to prove that grand juries in general, and this one in particular, are being used in ever-increasing numbers to repress the Puerto Rican Independence Struggle in violation of American law, international law, and the Charter of the United Nations.

Dated: August 21, 1977
New York, New York

A-16


JULIO ROSADO

APPELLANTS' ELECTRONIC SURVEILLANCE MOTION
(dated August 21, 1977)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter of the
Grand Jury Subpoenas of

JULIO ROSADO

LUIS ROSADO

M11-188

ANDRES ROSADO

MOTION FOR DISCLOSURE OF ELECTRONIC OR OTHER
SURVEILLANCE, FOR FULL INVESTIGATION FOR SUR-
VEILLANCE, FOR AN EVIDENTIARY HEARING TO SHOW
"JUST CAUSE" AND FOR FURTHER RELIEF

Julio and Luis Rosado, movants pro se, and Andres Rosado, by his undersigned attorney, respectfully move this Court pursuant to the Fourth, Fifth, and Sixth Amendments to the United States Constitution and Title 18 U.S.C. Sections 2510-20 and 3504, for certain orders as follows:

1. Movants claim that their subpoenas were issued on the basis of information obtained by the government, directly or indirectly, as a result of unlawfulelectronic surveillance in violation of the Constitution or laws of the United States or of any regulation or standard promulgated pursuant thereto, and was issued as part of a pattern of harassment, which includes but is not limited to electronic surveillance.

2. It is further claimed that the questions that will be propounded to them have been prompted by information obtained by the government, directly or indirectly, from unlawful electronic surveillance.

With reference to items 1 and 2 above, as fully alleged in the attached affidavits, Movants seek an order directing the attorney for the government to disclose the following:

a. Any and all actual voice records, tapes, mechanical or electronic recordings, logs, records, memoranda, letters and airtels of any electronic or other surveillance

i. of any wire or oral communications to which movants were a party;

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ii. of any wire or oral communications at any place in which movants had an "interest" at the time of the surveillance; "interest" meaning any property rights or any other nexus of use and reasonable expectation of privacy;

iii. of any wire or oral communications placed under surveillance for the purpose or having the effect in whole or part, of gathering evidence or leads against movants;

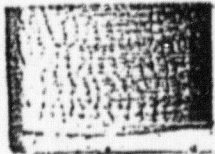
iv. of any wire or oral communications at any place where movants were at the time of the surveillance;

v. of any wire or oral communications detailed in ii-iv wherein a party to the same is unidentified;

vi. of any wire or oral communications detailed in ii-iv above in which movants are named or referred to.

b. Any and all actual voice records, tapes, mechanical or electronic recordings, logs, memoranda, records, letters and airtels, or any electronic or other surveillance of wire or oral communications such as are described in a., supra, which surveillance revealed the existence of such conversations but not the contents;

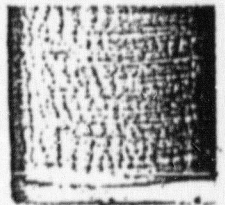
c. Any and all actual voice records, tapes, memoranda, letters and airtels of any electronic or other surveillance of any wire or oral communications to which the attorneys for the witnesses, their agents or employees, were a party and any conversation at which said attorneys, their agents, or employees were present;



d. The demands for disclosure, a-c., supra, embrace electronic or other surveillance undertaken not only by the United States, its agents and employees, but by any government agency---state or local---and by any private person or corporation; and further embrace any wire or oral communications to which a party to that conversation may have allegedly consented;

e. For any electronic or other surveillance as described in a.-d., supra, for which there are no voice records, tapes, mechanical or electronic recordings, logs, memoranda, records, letters, or airtels, the names, addresses and telephone numbers of the persons who conducted such surveillance or who have knowledge of said surveillance;

f. Any and all applications, affidavits, memoranda and other papers submitted in support of applications for executive, administrative or judicial approval of such surveillance as described supra, and all administrative, or judicial approval or such surveillance as described supra, and all



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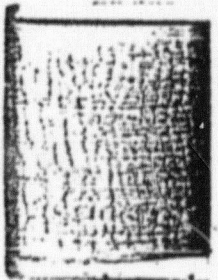
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administrative, judicial and executive orders and decisions responsive thereto, or relating to the surveillance as described supra.

3. The demands made supra seek not only disclosure of surveillance presently known to the government, but that which in the exercise of due dilligence may become : known thereto.

4. Movants further move this Court for entry of an order directing the United States to conduct a search of the files and records of every federal agency which conducts electronic surveillance in order to determine whether there has been electronic surveillance as described supra.

5. Movants further request entry of an order requiring the United States to inquire with respect to the electronic surveillance described supra of all state and local jurisdictions where movants may have been overheard and to direct a search before the hearing herein requested of the files of every agency within those jurisdictions which conduct electronic surveillance.



6. Movants further request entry of an order requiring that the government's response to this motion be sworn by the person or persons in charge of conducting the search for the surveillance described supra, setting forth in detail the nature and the procedures of the investigation conducted and specifying the particular federal, state and local agencies inquired of.

7. Movants further request an evidentiary hearing to determine:

- a. whether the government has fully complied with the demands made supra;
- b. the standing of movants to raise the issue of the legality of any said electronic or other surveillance;
- c. the legality of nay said electronic or other surveillance;
- d. the extent to which said surveillance tainted the commencement of the investigation of Movants and their attorneys and provided the basis for the instant subpoena.

8. Movants request that, in the event that said hearing should disclose that their subpoenas are the direct or indirect product of illegal electronic surveillance, such subpoenas should be quashed.

9. Movants further move that, in the event said hearing should

disclose that the investigation of the Movants and their attorneys rely upon illegally obtained evidence, the subpoenas be quashed.

The grounds for this motion are that only through effective adversary inquiry can the movants and their attorneys be protected in their right to be free of the effects of unlawful electronic or other surveillance.

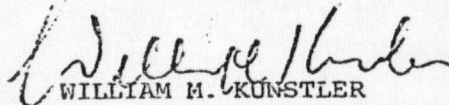
Movants ask that this Court issue a protective order directing that the nature and contents of aforesaid requested materials may not be disclosed by the government to any persons, except to counsel of record for movants and movants themselves.

Dated: August 21, 1977
New York, New York

Respectfully submitted,

JULIO ROSADO
Movant Pro Se
263 Eastern Parkway
Brooklyn, New York 11238
212-638-6889

LUIS ROSADO
Movant Pro Se
444 Second Avenue
New York, New York 10010
212-689-3314


WILLIAM M. KUNSTLER

Attorney for Movant ANDRES ROSADO
853 Broadway
New York, New York 10003
212-674-3303

Note: A list of names and telephone numbers used by movants and/or attorneys was attached to the original of this motion on file with the District Court.

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AFFIDAVIT OF JESSE BERMAN, ESQ.
(dated September 14, 1977)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Grand Jury
Subpoenas Served on

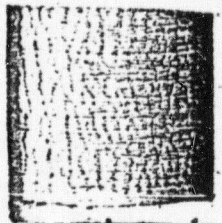
ANDRES ROSADO,
JULIO ROSADO, and
LUIS ROSADO.

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JESSE BERMAN, being duly sworn, deposes and says:

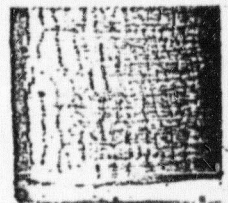
1. I am the attorney for Andres Rosado, Julio Rosado,
and Luis Rosado, the above-named subpoenaed witnesses
(hereinafter, "the witnesses"). I make this affidavit in
support of their application for an order requiring the govern-
ment to show cause why an order should not issue (1) vacating
the orders of this Court [Owen, J.], entered August 22, 1977,



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which held the witnesses in civil contempt, (2) releasing the witnesses from custody, (3) directing the government to respond to the witnesses' amended claims of illegal electronic surveillance, (4) granting an evidentiary hearing on said claims of illegal electronic surveillance, and (5) granting me a copy of the minutes of the morning and afternoon proceeding before Judge Owen, concerning the witnesses, pursuant to the Criminal Justice Act.

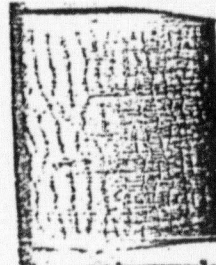
2. The witnesses were subpoenaed on August 12, 1977, by a grand jury which (according to the August 22, 1977 affidavit of Assistant U.S. Attorney Marmaro filed in this proceeding) is purportedly investigating a series of terrorist bombings attributed to the "FALN" (hereinafter, "the bombing investigation"). Said grand jury is the successor to a previous grand jury (I believe, the April, 1975, Additional) which was also purportedly participating in the same bombing investigation.



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3. I have been representing Andres Rosado in connection with the bombing investigation since approximately March 5, 1976. On that date I telephoned Assistant U.S. Attorney Nesland, who was then conducting the bombing investigation, and informed him that I was representing Andres Rosado. I met with Andres Rosado several times in my office; I also met with him and Mr. Nesland and three F.B.I. agents in Mr. Nesland's office on March 10, 1976; I also accompanied Andres Rosado at his April 7, 1976 appearance before said April, 1975 Additional Grand Jury. After that appearance Andres Rosado's subpoena was adjourned indefinitely. I can safely say that I am uniquely familiar with Andres Rosado's history in connection with the bombing investigation.

4. I have been representing Julio Rosado (and his wife, Lois Rosado) in connection with the bombing investigation since approximately May 13, 1976. Julio and Lois Rosado were subpoenaed to appear on May 19, 1976 before the said April, 1975



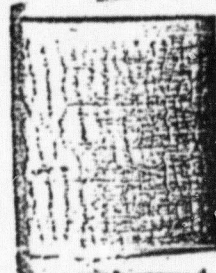
Additional Grand Jury. Their subpoena was ultimately adjourned indefinitely, and they were never actually called to testify. I had several conversations and correspondences with Mr. Nesland in connection with Julio (and Lois) Rosado, and I can safely say that I am uniquely familiar with Julio (and Lois) Rosado's history in connection with the bombing investigation.

5. In January, 1977, when the current grand jury began subpoenaing members of the National Commission on Hispanic Affairs of the Protestant Episcopal Church (hereinafter, "the Commission"), I was contacted by Luis Rosado, who was then a consultant to the Commission, as well as the director of the Grand Jury Education Project of the National Council of Churches. He was of the opinion that the grand jury had begun to arbitrarily subpoena anyone connected with the Commission, and he asked me to represent him. I agreed, and we met on several occasions in my office in anticipation of his being subpoenaed.

6. In August, 1977, I was away on my annual summer vacation in Guatemala and Mexico. On August 10, 1977, while in Guatemala City, I telephoned to New York City and spoke to Victoria Morgan, Esq., an attorney whom I had earlier requested to ascertain if there were any emergency matters at my office. In her review of my pressing legal matters as of August 11, 1977, there was nothing concerning the Rosados.

7. On the very next day, August 12, 1977, Andres, Julio and Luis Rosado ("the witnesses") were subpoenaed by the bombing investigation grand jury. When I next called my office, on August 25, 1977, from Laredo, Texas, I was told that the witnesses had been subpoenaed and that they had been jailed on August 22, 1977. I drove day and night and reached New York on August 28, 1977.

8. When I arrived in New York, I learned that Bill Kunstler, who is not associated with my office and had no previous association with the Rosados, had quickly filed a



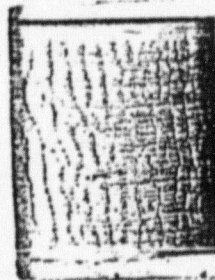
motion to reveal electronic surveillance and had stood in for Andres Rosado. I also learned that Julio and Luis Rosado, had been told by Mr. Marmaro that if their lawyer was not present on their return date before the grand jury, they would have to appear pro se, and that, because of my absence, they had indeed appeared pro se.

9. I visited the witnesses at Metropolitan Correctional Center on September 2, 1977, and again on September 8, 1977. I was told by all three witnesses that they regarded me as their attorney. I learned that Mr. Marmaro was my adversary.

10. I called Mr. Marmaro on approximately August 30, 1977, and was informed that (now that my clients were in jail) Mr. Marmaro was on vacation. It struck me as ironic that my clients had been jailed on August 22, 1977, when I was away on vacation, and now, a week later, they were still in jail, in civil contempt, although the grand jury was obviously not available to hear them, as now my adversary was on vacation.

11. I left a message for Mr. Marmaro to call me. I also inquired who was covering Mr. Marmaro's cases while he was away, and I was told that it was Assistant U.S. Attorney Parver. I called her, and she told me that she was only covering Mr. Marmaro's emergency matters, and that he had no emergency matters concerning any client of mine. Apparently, the only emergency was Mr. Marmaro's rush to lock the Rosados up before he went away on vacation.

12. On September 6, 1977, Mr. Marmaro returned from vacation and returned my call. I told him that I represented the witnesses and that I would like to read the minutes of the proceedings against them so I could properly prepare a motion to vacate the contempt. Mr. Marmaro permitted me to read, but not to copy, the minutes of the morning and afternoon sessions of the August 22, 1977, proceedings against the witnesses



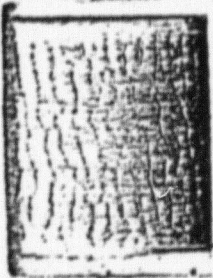
before Judge Owen. I can represent to this Court that I need a copy of those minutes to intelligently discuss with my clients precisely what happened on August 22, 1977, and in order to adequately demonstrate to this Court why the contempt findings of that date should be vacated. My clients (the witnesses) are indigent, as demonstrated by their annexed financial affidavits, and are entitled to a copy of those 64-page minutes under the Criminal Justice Act.

13. My recollection of those August 22, 1977 minutes is that three important things happened in court that day:

(a) Julio and Luis Rosado, deprived of counsel of their choice, appeared pro se and were jailed without any inquiry whatsoever by the Court as to whether Julio and Luis Rosado knew what rights they were waiving. (See, a.m. minutes of 8/12/77, at p. 2 and p.m. minutes of 8/22/77, at p. 25.) This failure on the part of the Court, even though

it was presumably inadvertant, clearly requires a vacatur of the contempt findings against Julio and Luis Rosado.

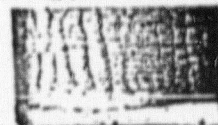
(b) Andres Rosado, deprived of counsel of his choice (who had a unique familiarity with the case), was represented by Bill Kunstler, who is a very competent attorney, but who obviously was unfamiliar with the bombing investigation or with why Andres Rosado had been subpoenaed. He was unfamiliar with Andres Rosado's testimony before the April, 1975 Additional Grand Jury. Even more significantly, the minutes reveal that even during the afternoon session of August 22, 1977, Mr. Kunstler was laboring under the mistaken belief that he was representing Andres Rosado at an immunity grant proceeding (See, p.m. minutes of



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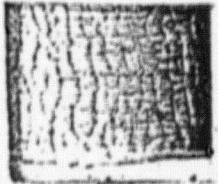
8/22/77, at pp. 5 and 8). If the 6th Amendment Right to adequately prepared counsel is to be taken seriously, the contempt finding against Andres Rosado must be vacated.

(c) Judge Owen expressed an interest in the electronic surveillance motion and specifically in the allegation of a wiretap on a Chicago phone number often called by the witnesses (See, a.m. minutes of 8/22/77, at pp. 28 and 29). The Court asked Mr. Marmaro about the Chicago wiretap (id. at 28), but Mr. Marmaro pooh-poohed the issue, conceding only that "I have to look further." (id.). [All we know is that this "further look", if ever undertaken, was evidently made from the vantage point of Mr. Marmaro's vacation site. I do not begrudge him his paid vacation; but my



clients were speedily subpoenaed and speedily jailed while I was away on my vacation.] Judge Owen ruled that since there was no supporting affidavit to the electronic surveillance motion, there was no evidence to trigger his ordering a government search and response or a hearing (See a.m. minutes of 8/22/77. at p. 7). Both Mr. Kunstler and Luis Rosado promised to get the affidavits (id., at pp. 10, 14, 25, 28).

14. I am now in possession of the affidavits concerning the Chicago wiretaps which interested Judge Owen. I also have three of the photographs which show where the bugging device was spliced into the line. I also have the Rosados' telephone bills showing when they made some of the calls from their homes to the number in question, and I will hand these up to the Court



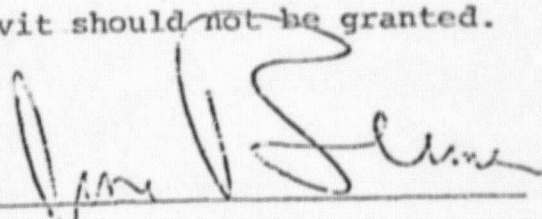
on the return date of the annexed order to show cause.

15. No previous application for the relief herein sought has been made.

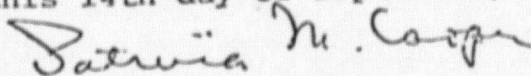
16. An order to show cause is sought rather than proceeding by notice of motion because the witnesses have been jailed in summary civil contempt as "recalcitrant witnesses" under 28 U.S.C. § 1826, which by its terms provides for summary proceedings and accelerated dispositions.

17. I have been authorized by Judge Owen's chambers to state in this affidavit that Judge Owen would accept the referral of this matter back from Part 1.

WHEREFORE, it is respectfully prayed that this Court order the government to show cause why the relief sought in the first paragraph of this affidavit should not be granted.


JESSE BERMAN

Sworn to before me
this 14th day of September, 1977.



PATRICIA M. COOPER
Notary Public, State of New York
No. 31-1620047



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AFFIDAVIT OF JOAN LOIS ROSADO
(dated September 14, 1977)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Grand Jury
Subpoenas Served on

ANDRES ROSADO,
JULIO ROSADO, and
LUIS ROSADO.

AFFIDAVIT

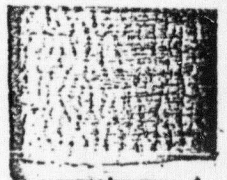
M-11-188

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOAN LOIS ROSADO, being duly sworn, deposes and says:

1. I am the wife of Julio Rosado, one of the above-captioned witnesses, and I am the sister-in-law of Andres and Luis Rosado, the other two above-captioned witnesses.

2. Our home phone number is (212) 638-6889. From that number, I, my husband, and his brothers have often made calls to and received calls from Jose Lopez (one of the witnesses subpoenaed by the Northern District of Illinois grand jury in connection with the "FALN" bombing investigation),



A-38

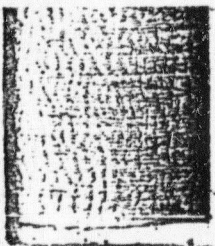
who lives at 2112 West Thomas Street, Chicago, Illinois, phone number (312) 235-2801. Attached are copies of our phone bills for July and August, 1977, reflecting 9 outgoing calls from our phone to that Chicago number.

3. We have also made numerous calls to and received calls from our attorneys, the witnesses subpoenaed by the grand jury in Chicago, and their attorneys (See schedule of phone numbers attached to electronic surveillance motion filed in the above-captioned matter on 8/22/77).

4. Since May of 1976, when my husband and I were originally subpoenaed in connection with this bombing investigation, I have noticed, when calling out from or in to my home phone, frequent loud clicks at the beginnings of conversations, whirring sounds in the background, sudden drops in volume, very frequent "wrong numbers" and "crossed wires," and conversations which are inexplicably cut off.

JOAN LOIS ROSADO

Sworn to before me this 14th day of September, 1977.



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JULIO ROSADO } HOME PHONE BILLS and JOAN LA ROSADO }

Statement of Charges and Credits for Calls

Page	2	638 6889 2	638 6889	7-7700
Date				
709	CHICAGO	ILL	312 235 2801	88 611182
710	BEAUMONTWOOD	NY	516 273 1356	29 207172
711	CHICAGO	ILL	312 235 2801	76 321471
712	ENGLEWOOD	NJ	201 569 1941	09 123182
713	ENGLEWOOD	NJ	201 569 1941	22 220311
713	ENGLEWOOD	NJ	201 569 1941	14 121091
713	ENGLEWOOD	NJ	201 569 1941	22 407112
716	CAK PARK	ILL	312 386 0270	33 206332
716	ENGLEWOOD	NJ	201 569 1941	09 109322
716	ENGLEWOOD	NJ	201 569 1941	09 111262
716	ENGLEWOOD	NJ	201 569 1941	09 115262
716	ENGLEWOOD	NJ	201 569 1941	35 715282
717	ENGLEWOOD	NJ	201 569 1941	09 109472
718	ENGLEWOOD	NJ	201 569 1941	23 109420
720	CHICAGO	ILL	312 235 2801	210 1523222

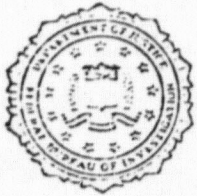
Statement of Charges and Credits for Calls

Page	2	638 6889 2	638 6889	8-7700
Date				
728	CHICAGO	ILL	312 235 2801	183 1306482
731	CHICAGO	ILL	312 235 2801	169 1212042
810	CHICAGO	ILL	312 235 2801	275 1222401
812	CHICAGO	ILL	312 235 2801	76 321091
814	CHICAGO	ILL	312 235 2801	319 2315022
816	CHICAGO	ILL	312 235 2801	806 3622521
822	RALEIGH	NC	919 821 7985	275 1222521
TOTAL TOLL				2984
TOTAL DIR ASSISTANCE AND TOLL				2974

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APPENDIX TO JOAN LOIS ROSADO AFFIDAVIT
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LETTER OF CLARENCE M. KELLEY
(dated July 26, 1977)



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

July 26, 1977

Michael David Ratner, Esq.
351 Broadway
New York, New York 10013

Dear Mr. Ratner:

This is in response to the Freedom of Information-Privacy Acts (FOIPA) request on behalf of your client, Mr. Jesse Berman.

Documents relating to Mr. Berman have been located and will be assigned for processing at the earliest possible date.

Your request has been assigned number 49,704 which you are requested to utilize in any correspondence with this Bureau regarding your request.

Sincerely yours,

A handwritten signature in cursive script, reading "Cm Kelley", is written over the typed name.

Clarence M. Kelley
Director

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SUPPLEMENTARY AFFIDAVIT OF JOAN LOIS ROSADO
(dated September 19, 1977)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In the Matter of the Grand Jury :
Subpoenas Served on :
: :
: :
: :
: :
: :
: :
-----X

ANDRES ROSADO,
JULIO ROSADO, and
LUIS ROSADO.

AFFIDAVIT

M-11-188

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOAN LOIS ROSADO, being duly sworn, deposes and says:

1. I make this affidavit to supplement my affidavit of September 14, 1977, filed in this matter, in order to include certain facts which I brought to Mr. Berman's attention on September 18, 1977, in response to certain questions which he asked me on that date and which he had not previously asked me.

2. On August 3, 1977, toward mid-day, I heard over the radio about the bombings which had taken place earlier that same day.

3. At about 1 p.m., I returned home from an appointment with my doctor and found two F.B.I. agents immediately outside my apartment door. I believe one of them was named Wolford (phonetically). I never learned the other agent's name; Wolford was the talker.

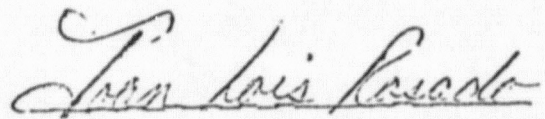
4. While Wolford was talking to me (he was asking when my husband, Julio Rosado, would return home; I was saying about 4 p.m.), I attempted to unlock my apartment door and found that although the door was closed, the lock was already unlocked.

5. I brought this fact to the attention of the two

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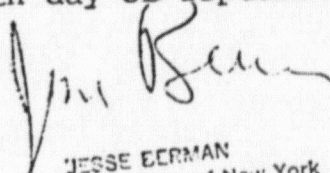
agents, who denied any knowledge of or responsibility for the fact that my door was unlocked.

6. Upon entering my apartment that afternoon, I called Mr. Berman's office to report this occurrence. He was away, but Lawrence Stern, Esq., answered the phone and I reported it to him. I only learned yesterday that Mr. Berman never found the note which Mr. Stern had left him about this incident.



JOAN LOIS ROSADO

Sworn to before me this
19th day of September, 1977.



JESSE EERMAN
Notary Public, State of New York
No. 31-5290718
Qualified in New York County
Commission Expires March 30, 1978

A-45

OPINION OF THE DISTRICT COURT
(Memorandum and Order dated September 27, 1977)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: In the Matter of the Grand Jury : M-11-88
: Subpoenas served on :
: ANDRES ROSADO, : MEMORANDUM AND ORDER
: JULIO ROSADO, and :
: LUIS ROSADO. :
-----X

OWEN, District Judge

Andres, Julio and Luis Rosado move for (I) an order vacating my order of August 22, 1977 holding them in civil contempt pursuant to 28 U.S.C. § 1826; (II) an order directing the government to respond to the Rosados' allegations of illegal electronic surveillance and for a hearing on their claims of illegal electronic surveillance, (III) an order directing that pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, they be furnished the transcribed minutes of the contempt and related proceedings, and (IV) a protective order barring use by the government of the Rosados' signatures on CJA affidavits appended to the order to show cause.(1)

(1)

I note the utter failure to comply with Rule 9(b) of the General Rules of the United States District Courts for the Southern and Eastern Districts of New York, which requires movants to "file with the motion papers a memorandum setting forth the points and authorities relied upon"

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(I) This proceeding commenced before me on August 16, 1977 when attorney William Kunstler appeared before me in the robing room of Part I to obtain an adjournment of certain grand jury subpoenas addressed to the Rosado brothers. While the Rosado brothers had been represented by attorney Jesse Berman in connection with federal inquiries into bombings attributed to the FALN, Kunstler Mr. Kunstler informed me that Mr. Berman was on a camping trip in Guatamala and could not be reached. Mr. Kunstler also informed me (and this representation has never been denied by him or any of the Rosados) that:

"They [the Rosado brothers] asked me to represent them until Jesse Berman came back, which would be about the 26th or 28th of August. I told them I would represent them."

The Assistant United States Attorney opposed the adjournment, stating that the matters sought by the grand jury were clearly not testimonial⁽²⁾, were not privileged,⁽³⁾

(2)

The Grand Jury was seeking only finger and palm prints, and voice and handwriting exemplars.

(3)

There is no fourth or fifth amendment obstacle to the grand jury's right to prints and exemplars. United States v. Dionisio, 410 U.S. 1 (1973).

and there was no need for delay. Mr. Kunstler then stated that the Rosados would not cooperate with the grand jury, but merely wished time to formulate and interpose legal objections to performance. In this regard, he stated:

"Mr. Kunstler: . . . I think Mr. Marmaro knows, because he told me that he had been informed, that they [the Rosado brothers] are not going to cooperate, so it is going to be a legal issue.

"Mr. Marmaro: And I have told Mr. Kunstler that the Government would move to hold them in contempt.

"Mr. Kunstler: Oh, there will be a contempt hearing. If it goes all the way there may be incarceration. But we want a fighting chance."

The Rosados were thereupon given a six day adjournment.

On the morning of August 22, the adjourned day, Mr. Kunstler appeared together with the Rosados. He announced that he now represented only Andres, and that Julio and Luis were appearing pro se. A memorandum of law was submitted subscribed by Mr. Kunstler, as attorney for Andres, and Julio and Luis, each pro se. Legal argument was heard from all three. The legal objections were overruled and the witnesses directed to comply with the subpoenas before the grand jury. They refused, and the Court ordered them to comply. The witnesses returned to the grand jury and again refused. Late in the afternoon

of August 22, when the court found them in contempt and proposed to rule, for the first time Julio and Luis requested an adjournment until their attorney would return from his vacation. I regarded this request for counsel at that time as frivolous and so regard it now. While there is no question that a witness embroiled in a contempt situation before a grand jury is entitled to counsel, In re Di Bella, 519 F.2d 955, 959 (2d Cir. 1975), the present contention of Julio and Luis Rosado that they were forced to proceed in the absence of counsel of their choice and were entitled to explicit instructions from the court outlining their right to counsel and the dangers of proceeding pro se is, on this record, wholly without merit. See United States v. Rosenthal, 470 F.2d 837, 844-45 (2d Cir. 1972), cert. denied, 412 U.S. 909 (1973). Andres and Julio Rosado had had Mr. Berman as their lawyer in connection with the various FALN inquiries since March and May 1976, respectively, and Luis has been represented by Mr. Berman in those matters since January 1977. In his absence, they engaged William Kunstler on August 15 to represent all three of them. As of August 15, they were therefore fully aware of their right to counsel, the benefits of counsel, and, indeed, they all had counsel. For whatever tactical reason, somewhere in the period August 16

to August 22, two of the Rosados decided not to have Mr. Kunstler appear for them as an attorney of record, although submitting joint papers with him. Mr. Kunstler, one notes, a number of times during the day of August 22 even appeared to be speaking on behalf of all three brothers,⁽⁴⁾ and since all three were obviously united in interest, Mr. Kunstler, speaking for one, was, as a practical matter, speaking for all three.

Were one to speculate on what was really going on here, a clear background is provided by Mr. Kunstler's statements to me on our first meeting on August 16. On that day, he stated (1) that the Rosados were not going to cooperate; (2) they wished to make legal arguments; and (3) recognized that on the adjourned date there would be a contempt hearing and there might even thereafter be incarceration, "if it goes all the way" ⁽⁵⁾ It is

(4)

"Mr. Kunstler: There is not going to be an immunity grant? Then, Judge, each of the defendants raises a constitutional right in the grand jury under all the amendments of the Constitution, including the Fifth, and that is where we are at this moment." Transcript of August 22, 1977, 2:55 P.M. at 5.

(5) The adjournment of six days afforded the Rosados the notice they are entitled to under In re Sadin, 509 F.2d 1252 (2d Cir. 1975), for the purpose of preparing a defense to the citation for contempt which everyone knew was inevitable.

reasonably clear that the Rosados did not anticipate the speed with which events moved on August 22. They perhaps expected more drawn-out proceedings as had occurred with regard to Pedro Archuleta, another witness in the same inquiry. See In re Archuleta, No. 77-1286, Slip Op. 5321 (2d Cir. Aug. 19, 1977). Thus, having relinquished Mr. Kunstler as counsel on the morning of August 22, they found themselves at the end of the day, after their hearing on the legal issues, facing possible incarceration which they thought might come some time in the future. Only then did they suddenly raise the question of counsel to obtain a delay of what was squarely before them. Having had Mr. Kunstler as counsel of record until that morning, and having relinquished him for reasons best known to themselves, ⁽⁶⁾ such a tactical reversal -- to demand counsel -- for the apparent purpose of delay cannot be countenanced.

(II) The Rosados allege "eight factors" supporting their claim of illegal electronic surveillance. According to my notes on oral argument they are:

⁽⁶⁾ One wonders why, if their desire for counsel was genuine, and Mr. Kunstler having been their counsel on August 16, they did not simply seek to reinstate him.

(1) Evidence produced at a Chicago hearing that a telephone, number (312) 235-2801, belonging to Jose Lopez, one of the witnesses subpoenaed there in connection with an FALN bombing grand jury investigation, was tapped;

(2) The fact that the Rosados frequently called (312) 235-2801 and received calls from that number and spoke with Jose Lopez, documentary evidence of which was produced at the oral argument in the form of telephone bills appended as an exhibit to an affidavit by Joan Lois Rosado, wife of Julio Rosado;

(3) Assertions in Joan Lois Rosado's affidavit that since May 1976 she has "noticed . . . frequent loud clicks . . . whirring sounds . . . sudden drops in volume, very frequent 'wrong numbers and crossed wires,' and conversations which are inexplicably cut off;"

(4) Evidence in the form of a copy of a letter from FBI Director Clarence Kelley to Mr. Michael Ratner, attorney for Jesse Berman -- the Rosados' attorney -- informing Mr. Ratner of the existence of documents relating to Mr. Berman, in response to a request made under the Freedom of Information Act;

(5) The fact that a well-concealed safe, purported to contain Pedro Archuleta's papers, was stolen

from Mr. Berman's office apparently over the weekend preceding the contempt proceeding on August 22, 1977;

(6) The fact that the Rosado brothers were asked by the grand jury for voice exemplars talking into a telephone reciting the line, "There will be a message at 14th Street on the subway station. Thank you," indicates that the authorities must have a recording in which the quoted statement is spoken and that they have another recording, known to contain the voice of one of the Rosado brothers, which matches the voice in the first recording, and that the voice exemplars are desired to determine which of the three brothers it is; and that this purported recording known to contain the voice of one of the Rosado brothers must have resulted from an illegal electronic surveillance;

(7) The fact that a pending criminal indictment in a case captioned United States v. Benjamin Cruz, in which Mr. Berman was defense counsel, was nollied one and one-half years after a request by the defense that the government affirm or deny the existence of illegal electronic surveillance, rather than to comply with the request; and finally

(8) The totality of the circumstances represented by the prior seven factors.

I conclude that neither singly, nor in combination, do these factors support the Rosados' position.

(1) As to the Chicago "wire tap," after lengthy hearings and the taking of substantial testimony before Chief Judge James B. Parsons of the United States District Court for the Northern District of Illinois on August 17, 1977, Chief Judge Parsons denied a motion to quash grand jury subpoenas, which had been made on the basis of allegations of illegal wiretapping of Jose Lopez' telephone. I have a transcript of the full hearing (7) and have been offered no additional evidence bearing directly on the existence of a telephone tap on the Lopez telephone in Chicago. Therefore, there is no occasion for me to review the determination made by Chief Judge Parsons.

(2) The fact that the Rosados called the Lopez number in Chicago does not raise an inference of electronic surveillance either in Chicago or New York.

(3) These claims are similar to those made by Pedro Achuleta and rejected by the Court of Appeals in In re Pedro Archuleta, supra, as a showing sufficient to require the government to affirm or deny the existence of

(7)

I find it questionable and misleading for the Rosados to submit but 15 pages out of a record of 180 pages, as if it were the essential picture.

electronic surveillance. Id., Slip Op. at 5326-27.

(4) - (7) These do not on their face raise any inference at all of electronic surveillance.

(8) Finally, the seven factors viewed together raise no inference of electronic surveillance. To conclude otherwise, in my opinion, would be pure speculation.

There is no allegation here, as there apparently was in United States v. Grusse, 515 F.2d 157 (2d Cir. 1975), that questions asked a grand jury witness could only have resulted from wiretapping. In re Millow, 529 F.2d 770, 774 (2d Cir. 1976). Indeed, Mr. Berman, in paragraph 4 of his affidavit in support of the order to show cause herein, stated that he commenced representing the Rosados in connection with this general inquiry in 1976, so it is apparent that the government was aware of the Rosados for quite some time before there were ever any allegations of wiretapping.

Similarly, this is not a case such as United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974), in which there are allegations that:

American officials bribed an employee of the public telephone company to conduct electronic surveillance of him and that the results of the surveillance were given to American agents and forwarded to government prosecutors in New York. According to Toscanino, the telephone company employee was eventually arrested in Uruguay for illegal eavesdropping and was indicted and imprisoned.

Id. at 270. Here, the Rosados have failed to raise anything

but "unsupported suspicion," In re Millow, 529 F.2d at 775, and not a claim with "a 'colorable' basis," which is the minimum requirement in order "to trigger the government's obligation to respond under [18 U.S.C.] § 3504." United States v. Yanagita, 552 F.2d 940, 943 (2d Cir. 1977). See In re Grand Jury (Vigil), 524 F.2d 209, 214 (10th Cir. 1975), cert. denied, 425 U.S. 927 (1976). Thus here, where the Rosados were not asked any questions, let alone narrow questions, but rather were only required by the grand jury to produce fingerprints, palm prints, and voice and handwriting exemplars, as to which a challenge based on the fourth and fifth amendments to the Constitution is foreclosed by United States v. Dionisio, 410 U.S. 1 (1973), I find that the showing made by the Rosados of possible wiretapping is insufficient to require the government even to file an affidavit by the assistant United States attorney in charge of the grand jury investigation denying or affirming that the basis for the grand jury subpoena for the Rosados was the fruit of a wiretap. See In re Archuleta, supra.

(III) The Rosados have also moved for an order authorizing them to receive transcripts of the court proceedings under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A.

18 U.S.C. § 3006A(a) mandates that each district plan provide that the benefits of the CJA be extended to

those:

for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which there is a substantial loss of liberty, any Federal law requires the appointment of counsel.

Paragraph 2.01(a)(4) of the Guidelines for the Administration of the Criminal Justice Act states that the purpose of this provision is "to obviate the need for future amendments to the Act each time the right to counsel may be extended to new situations by judicial decision or Federal statutes."

In re Di Bella, 518 F.2d 955, 959 (2d Cir. 1975), extended the right to effective assistance of counsel to those, like the Rosados, charged with civil contempt under 28 U.S.C. § 1826. Accordingly, I will authorize payment for one set of transcripts under the CJA to be shared by the Rosados.

(IV) Finally, the Rosados move for a protective order barring the government from using the signatures on their CJA affidavits. They do not want the grand jury to obtain indirectly that which they have refused to supply directly.

This motion is frivolous. As their CJA affidavits reveal, all three brothers have charge accounts from which the government can readily obtain copies of their signatures. The most that this motion can accomplish,

even if granted, is to put the government to some slight extra trouble and expense.

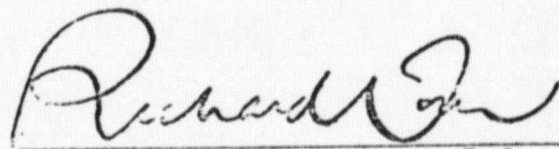
Suffice it to say that the information contained in these signatures is not privileged, and that no recognized ground for deleting it from the record has been suggested by counsel. Certainly the court may not expunge or seal a portion of the record merely because the attorney who filed a particular item has concluded that it was a strategic error to do so. See Ferraro v. Arthur M. Rosenberg Co., Inc., 156 F.2d 212, 214 (2d Cir. 1946) (discussing Fed. R. Civ. P. 60(a)); United States v. Walker, 17 F.R.D. 5, 7 (S.D.N.Y. 1955) (discussing Fed. R. Crim. P. 36).

Accordingly, the motion is denied insofar as a protective order is sought.

In summary, the request for authorization of transcripts under the CJA is granted; the motion is in all other respects denied.

So Ordered. (8)

September 21, 1977.


United States District Judge

(8)

Mr. Berman by telephone raised the question of whether I had entered a final order as to that part of the motion dealing with Luis and Julio Rosado going pro se. My recollection is that I only indicated that I wanted no further argument on this point, and not that I had entered a final order denying that aspect of the motion. In any event, this order is the final order as to all points considered.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

LARRY LONG, being duly sworn, deposes
and says: deponent is not a party to the action, is over
18 years of age and resides at 212 E. 11 St., NY NY,
On November 4, 1977, served the within

Appellants' Appendix
upon Robert B. Fiske, Jr. attorney(s)
for government in this action, at

1 St. Andrew's Plaza
NY NY 10007
the address designated by said attorney(s) for that purpose
by depositing a true copy of same enclosed in a post-paid
properly addressed wrapper, in - post-office- official
depository under the exclusive care and custody of the
United States Postal Service within the State of New York.

Larry Long
LARRY LONG

Sworn to before me on
November 4, 1977.

[Signature]

JOSE GERMAN
Notary Public, State of New York
No. 31-5290718
Qualified in New York County
Commission Expires March 30, 1978